

## AMENDMENT

Appln. No. 10/618,940

Amendment dated February 3, 2006

Reply to Office Action mailed October 6, 2005

REMARKSParagraph 1 of the Office Action

The specification has been objected to under 35 U.S.C. 132(a) as introducing new matter into the disclosure.

It is alleged in the Office Action that the amendments to claims 9, 12, and 13 requested in the Amendment accompanying the RCE introduce new matter into the disclosure of the application. It is contended that:

The added material which is not supported by the original disclosure is as follows: the guides spaced from one of said end wall portions at a distance of approximately one quarter of the width of one of the side wall portions, a pair of said guides positioned adjacent to one of said sidewall portions being spaced from each other a distance approximately equal to one half of the width of said side wall portion (claims 9,12,13). The specification does not define the location of the guides on the sidewall. The drawings illustrate this positioning in general but are not indicated to be drawn to scale and cannot be relied on for locating the guides to this exactness.

However, simply because the specification of the patent application might not explicitly mention a feature of the invention does not mean that the feature is not disclosed in the application. It is well settled that the drawings of a patent application form a part of the disclosure of the application, and are capable of providing support for claim limitations that are not specifically stated in the written detailed description. (See, e.g., *Vas-Cath, Inc. v. Marhurkar*, 19 USPQ2d 1111 (Fed. Cir. 1991)). Contrary to the characterization in the rejection of the Office Action, the requirements of claims 9, 12 and 13 do not rely upon the drawings having been drawn to any particular scale, as applicant is not claiming any particular size or dimension for the elements, but instead is claiming a proportional relationship between the various elements that is clearly shown in the drawings, and that does not depend upon the use of any particular scale to determine a particular dimension. In the *Vas-Cath* case, a proportional relationship shown in the drawings of a patent application was found to be sufficient support for a limitation in the claims setting forth that proportion, where the text of the application did not explicitly set forth that

## AMENDMENT

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proportion.

It is therefore submitted that the drawings of the present application provide sufficient support for the requirements of claims 9, 12, and 13. Also, the specification has been amended to explicitly set forth the proportional relationship set forth in the drawings.

Withdrawal of the §132(a) objection is therefore respectfully requested.

**Paragraphs 2 through 6 of the Office Action**

Claims 1, 3 through 8, and 10 through 14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Dumenigo in view of Carswell et al.

Claim 9 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Dumenigo in view of Carswell et al., and further in view of Meloney

Claim 1 requires, in part, "wherein said peripheral wall has a generally rectangular horizontal cross sectional shape with a pair of side wall portions and a pair of end wall portions" and "wherein each of said guides is positioned closely adjacent to one of said side wall portions and being spaced from each of said end wall portions".

It is conceded in the Office Action that:

Dumenigo does not teach the guides are positioned closely adjacent to a sidewall portion and spaced from the end wall portions.

It is then alleged in the Office Action that:

Carswell discloses a device with a moveable panel for lifting the contents and shows that positioning the guides adjacent to a sidewall and spaced from the end walls is an equivalent structure known in the art (Figure 3).

However, it is submitted that the Carswell does not clearly disclose the relationship set forth in claim 1. The rejection of the Office Action specifically refers to Figure 3 of the Carswell patent in support of the contention that Carswell teaches this relationship, but is less than clear what is the relationship between the support members 24 and any

## AMENDMENT

Appn. No. 10/618,940

Amendment dated February 3, 2006

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respective walls. Figure 3 appears to show the support members 24 spaced from the wall with the front door 12, and also shows one of the support members 24 spaced from the rear wall. In contrast, there appears to be no disclosure of what the spatial relationship is between these support members 24 and any side walls, as any relationship between the support members 24 and the side walls is not clearly shown in Figure 3, or any of the other figures of Carswell. One can speculate as to the relationship between the support members 24 and the side walls, but that does not establish what the Carswell patent discloses and thus anticipates. If one of ordinary skill in the art were to extrapolate the relationships shown between the support members 24 and the first and rear walls to the relationship with the side walls, the skilled artisan would have to guess that the support members are also spaced from the side walls.

Furthermore, the bald assertion in the rejection of the Office Action that this showing in the Carswell patent establishes that it is "an equivalent structure [to the Dumengo structure] known in the art" is completely unsupported by anything in the art. Simply because the Carswell patent might show a different relationship between elements than the elements in the Dumengo patent does not establish that these structures are art recognized equivalents, only that both are known.

The rejection of claim 1 in the Office Action further alleges that:

Therefore, because these two alternatives for positioning the guides were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute positioning of the guides adjacent a side wall and spaced from the end wall as disclosed by Carswell for the positioning disclosed by Dumengo.

Again, the rejection fails to show any evidence that the structures of the Dumengo and Carswell patents are "art-recognized equivalents", only that both were "known", which is not the same as "art-recognized equivalents". And since it is far from clear that the Carswell patent even discloses the claimed relationship, it is submitted that for both of these reasons, the allegedly obvious combination of the Dumengo and Carswell patents does not render the claimed invention "obvious".

## AMENDMENT

Appn. No. 10/618,940

Amendment dated February 3, 2006

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It is further asserted in the rejection of claims 12 and 13 that (emphasis added):

Regarding claims 12 and 13, Dumengo and Carswell disclose the device of claim 11 except for positioning of the guides a distance of approximately one quarter of the width of the sidewall from the end wall and spacing a pair of guides from each other a distance approximately one half the width of the side wall. It would have been an obvious matter of design choice to position the guides a distance of approximately one quarter of the width of the sidewall from the end wall and space a pair of guides a distance approximately one half the width of the side wall from each other, since applicant has not disclosed that this spacing solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a the spacing at a variety of distances.

However, if one is to look gain to the previous amendment, this is false. It was noted in the very first paragraph addressing the previous rejection that:

The positioning of the guides with respect to the side wall portions and the end wall portions, with the guides being spaced from the end wall portions along the side wall portions is submitted to provide greater support for the panel, especially toward the middle of the panel when the panel is supporting objects such as clothes.

And it was further noted in the second paragraph of the earlier amendment that:

However, unlike the Dumenigo structure, the claimed invention requires that the guides be adjacent to the relatively longer side wall portions and be spaced from the relatively shorter end wall portions, which facilitates the support of the panel along the longer sides of the panel, especially when carrying large amounts of clothes.

In addition to this statement in the earlier amendment, it is noted that the spacing of the guides from the ends reduces the span between the guides, and thus reduces the bending stress on the panel (as compared to the corner positioning of the posts that is advocated by Dumengo), and thus the panel may be constructed of a lighter duty material which can reduce its weight. It is also submitted that the claimed spacing facilitates sliding of the panel along the guides with less chance of the panel binding on the guides.

It is therefore submitted that the cited patents, and especially the allegedly obvious combination of Dumengo, Carswell, and Meloney set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claims 1 and 9. Further, claims 3 through 8 and 10 through 14, which depend

**AMENDMENT**

Appln. No. 10/618,940

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from claims 1 and 9, also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

For these reasons, it is believed that the remaining claims are in allowable form and the application respectfully requests withdrawal of the rejection.

**CONCLUSION**

In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

Respectfully submitted,

  
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